

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TYLER ERDMAN, : Case No.: 20-CV-4162

Plaintiff, :

v. :

ADAM VICTOR, : New York, New York

Defendant. : September 6, 2024

-----:

TRANSCRIPT OF STATUS CONFERENCE HEARING
BEFORE THE HONORABLE GABRIEL W. GORENSTEIN
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff: TYLER ERDMAN, PLAINTIFF PRO SE
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Proceedings recorded by electronic sound recording;
Transcript produced by transcription service.

1 THE DEPUTY CLERK: Good afternoon. This is
2 in the matter of Erdman v. Victor, et al.; Case
3 Number: 20-cv-4162.

4 Starting at plaintiff's counsel, please
5 state your appearance for the record.

6 MR. ERDMAN: Tyler Erdman.

7 THE COURT: Okay.

8 MR. POLIZZOTTO: For the defendant, Adam
9 Victor, Alfred Polizzotto.

10 MR. RODRIGUEZ: Also for the defendant,
11 Adam Victor, Emilio Rodriguez.

12 THE COURT: Okay.

13 All right. You can be seated if you're not
14 speaking.

15 We're here based upon two letters, I guess,
16 Dockets 279 and 281. I have to say there's not a
17 lot of clarity in my mind about what is going on.
18 There's also not a lot of clarity in my mind about
19 what we're looking for and even what defamatory
20 statements we're talking about. All this makes it
21 very hard to deal with this discovery dispute. I
22 mean, we're going to have to slog through it.

23 I mean, you know, the only statements that
24 can be the subject of the defamation claim have to
25 have occurred a year before filing the complaint,

1 which I guess would be sometime in June 2019 to June
2 2020. That doesn't mean that there might not be
3 relevance. If the defamatory statements are about
4 things that happened beforehand, then I gather
5 that's the basis for which plaintiff is seeking
6 discovery from the earlier period. That's not
7 unreasonable to do so.

8 I realize -- you know, it's not going to
9 happen.

10 THE DEPUTY CLERK: I know.

11 THE COURT: You're going to send a message
12 to someone.

13 Sorry about the blinking light. There's
14 one out, and there's one blinking. Two out. Three
15 out.

16 THE DEPUTY CLERK: I just fixed the lights,
17 too, but I'll --

18 THE COURT: There's five out -- six out --
19 seven, and then one blinking. So --

20 THE DEPUTY CLERK: Yep. I'll send an
21 e-mail right now.

22 THE COURT: That's a big project.

23 THE DEPUTY CLERK: I'll send an e-mail
24 right now.

25 THE COURT: Okay.

1 But, you know, the basic thing before you
2 do anything is figure out, you know, what databases
3 or custodians or files you're searching or
4 producing, and then, you know, what gets searched in
5 what years. I mean, I don't know how this has
6 gotten so out of control.

7 But, you know, the letters, you know,
8 they're not in a form that allow me to say do X, Y,
9 or Z, so maybe we can try to do that today. But,
10 you know, there's some value, I would think,
11 Mr. Erdman, in ending this case and bringing
12 whatever evidence you have and just going to trial
13 or make a summary judgment motion.

14 So there's a value in that. And there's
15 also a principle of proportionality, which is you
16 don't get every last possible 50 e-mail accounts
17 that you think someone might have used. You know,
18 this is not that sort of case.

19 For all you know, Mr. Erdman, do you have
20 any solutions, other than the asking for the world,
21 which is what you've asked for?

22 MR. ERDMAN: Yes, I understand that there
23 are a lot of repositories in there, and I don't
24 expect all of those. They just never negotiate over
25 what they would like -- what would be reasonable to

1 search. They just say they provided everything, and
2 there's no evidence they ever have done that.
3 And --

4 THE COURT: Well, I mean, they have an
5 affidavit saying what it is. I don't know. That
6 was -- I'm sure you know about it. It was an
7 affidavit from May, signed by Mr. Rodriguez, you
8 know, listing these things, and in not terribly
9 clear terms, suggesting that they had been, you
10 know, made available to you.

11 So do you have some solution short of, you
12 know, starting this over? Because I don't think
13 that's going to happen.

14 MR. ERDMAN: Okay. I believe one of the
15 most important things are these forensic images that
16 were created of various computers. Those would be
17 pretty dispositive of his claims of me hacking,
18 taking files, et cetera. I believe those should be
19 fairly easy to produce. I have invoices showing
20 they were created a long time ago.

21 THE COURT: Okay. So hold on. Hold on.

22 Can you translate this into terms that they
23 will understand? In other words, they say they had,
24 you know, certain P drives. I don't know if that's
25 what you're talking about, or something else, but we

1 need to start talking the same language.

2 MR. ERDMAN: Your Honor, at the last
3 conference, ordered that they identify the hard
4 drives on their list of repositories, which they did
5 not. So I --

6 THE COURT: Okay. Stop.

7 "Identify the hard drives on their list of
8 repositories." What does that mean?

9 MR. ERDMAN: They had -- I believe they
10 called it a collection log.

11 THE COURT: Okay.

12 MR. ERDMAN: And it would list hard drive,
13 but that would be all that they identified the
14 repository by. They wouldn't say what it's from,
15 anything about it.

16 THE COURT: All right. So this is what
17 document?

18 MR. ERDMAN: I believe that was one of the
19 exhibits to their affidavit.

20 THE COURT: I assume you're looking this up
21 for me.

22 MR. ERDMAN: It's double-printed. I
23 believe it is 266-1 or -3.

24 THE COURT: That's the affidavit I've been
25 talking about.

1 MR. ERDMAN: It was an attachment to that.

2 THE COURT: Okay. Sounds like -- yes,
3 these little, tiny Excel spreadsheets. I have these
4 here.

5 MR. ERDMAN: Okay. I made a copy where I
6 compiled that information, where it was more
7 readable, and identified what I believe each one to
8 be, if you'd like to see that.

9 THE COURT: Well, hold on.

10 Just so I understand. Am I looking at page
11 1, 2, or 3 of the exhibits to the May 1st affidavit?

12 MR. ERDMAN: I had them as separate pages.
13 It's the longer of the two Excel sheets. This one.

14 MR. POLIZZOTTO: I believe that's 266-1,
15 Your Honor.

16 MR. ERDMAN: I think 266-1 is the list of
17 e-mail accounts.

18 THE COURT: Yeah, I think it's 2 -- dash 2.
19 No?

20 MR. POLIZZOTTO: No, Your Honor.

21 THE COURT: Oh, yeah, it is dash 1.

22 MR. RODRIGUEZ: It may be dash 1. Yes.

23 THE COURT: Okay. So before we get
24 anywhere, are these the P drives? What are these,
25 from your point of view?

1 MR. POLIZZOTTO: No. No, Your Honor. Some
2 of it is the P drives.

3 In the affidavit, the first six paragraphs
4 identify that there had been two computers, an iMac
5 and a Mac Pro, and that the documents had been
6 transferred from one computer to another prior to
7 the commencement of this action, and that what's
8 detailed on that spreadsheet are the importing of
9 the documents from those hard drives and the
10 P drives. The P drives were separate --

11 THE COURT: I don't understand what you
12 just said.

13 MR. POLIZZOTTO: Okay.

14 THE COURT: I read your affidavit twice --
15 three times, probably, trying to understand what was
16 going on and how it related to this.

17 So you talk about files going from an iMac
18 to a laptop -- I'm not going to worry about that --
19 and then being transmitted to TransPerfect.

20 So is one or all five of these that?

21 MR. POLIZZOTTO: On 266-1 ...

22 THE COURT: There's five things listed.

23 MR. ERDMAN: And, Your Honor, I believe I
24 identified all of those.

25 THE COURT: You know what these are?

1 MR. ERDMAN: Yes.

2 THE COURT: What are they?

3 MR. ERDMAN: They're hard drives that I had
4 turned over to Mr. Victor in another action for him
5 to do a forensic analysis of. Mr. Rodriguez had an
6 affidavit where he said that they didn't believe the
7 documents to be responsive on some of those hard
8 drives, so they just weren't produced.

9 THE COURT: You think this is not described
10 in Mr. Rodriguez's affidavit?

11 MR. ERDMAN: Not at all. And I checked.
12 They did --

13 THE COURT: You think they are?

14 MR. POLIZZOTTO: Yes, after consulting with
15 Tribble, TransPerfect and Setec.

16 THE COURT: I mean, hold on. Back up.

17 Are you producing hard drives to them of
18 your stuff or --

19 MR. ERDMAN: This was a year --

20 THE COURT: Let me finish my sentence.
21 We're on the record.

22 When you describe producing hard drives to
23 them, are those hard drives of your materials or
24 Victor's materials?

25 MR. ERDMAN: I believe they were primarily

1 mine, but some mixed with Victor because I used them
2 for work purposes and had a little bit of everything
3 on them.

4 THE COURT: And you think that -- something
5 else?

6 MR. POLIZZOTTO: No. The way that the --
7 when we had consulted in a conference with
8 Mr. Erdman and the companies that had imported the
9 data, it was explained that there was a computer
10 that Mr. Victor used and then hard drives that were
11 in a file server. Those hard drives that were in
12 the file server were referred to as the P drives.
13 And what's on 266-1 was imported from the hard drive
14 from Mr. Victor's computer and were clones of the
15 P drive. After the --

16 THE COURT: Is one of the entries the
17 computer and other entries the P drives?

18 MR. RODRIGUEZ: Yes.

19 THE COURT: Which is which?

20 MR. POLIZZOTTO: So there were some -- I
21 believe that the P drives were the ones from --

22 MR. RODRIGUEZ: That's correct.

23 MR. POLIZZOTTO: -- from TLS Forensics.

24 THE COURT: The last two?

25 MR. POLIZZOTTO: There are three. One is

1 in dark gray.

2 THE COURT: Oh, I see. I can't even --
3 now, I see it.

4 MR. RODRIGUEZ: Yeah. Apologize for the --

5 THE COURT: I was saying five. In fact,
6 it's --

7 MR. RODRIGUEZ: Yeah.

8 THE COURT: -- 12, maybe.

9 MR. ERDMAN: Your Honor, would you like --

10 MR. POLIZZOTTO: 12 entries.

11 THE COURT: Okay.

12 All right, so you're saying some of these
13 are the P drives?

14 MR. RODRIGUEZ: Yes.

15 MR. POLIZZOTTO: Yes.

16 THE COURT: And you're saying they're not?

17 MR. ERDMAN: They're not. They have
18 produced a list --

19 THE COURT: How am I supposed to resolve
20 this?

21 MR. ERDMAN: So to identify it, they had a
22 list of things that they said were on the P drive.
23 I checked the files on that list to their
24 production, and they're nowhere to be found.

25 In one of their collection logs, they

1 provided a serial number of a hard drive that I had
2 provided to them. That's the one from 7-8-21. And
3 I had also seen e-mails where they were talking
4 about three other hard drives I had turned over to
5 them at the same time. And I had checked the amount
6 of files on there and various documents to see what
7 they were talking about on that.

8 MR. POLIZZOTTO: Your Honor, if I might?

9 THE COURT: Yeah.

10 MR. POLIZZOTTO: After our last conference,
11 we had a meeting with Mr. Erdman and the companies,
12 the two companies that were involved in importing
13 the files.

14 THE COURT: Yep.

15 MR. POLIZZOTTO: These issues, if they were
16 even addressed -- and that was not addressed -- to
17 them when they were online with us, could have been
18 easily addressed if he had that issue. But I did
19 tell him at the time that there was nothing held
20 back from them, that they had the drives that were
21 these "P drives," and they had imported the
22 documents from Mr. Victor's computer.

23 THE COURT: I mean, do the P drives still
24 exist in the material world, Mr. Erdman?

25 MR. ERDMAN: I believe that --

1 THE COURT: Actually, I'll ask you guys
2 first. Do they still exist, or is this all that's
3 left of them?

4 MR. POLIZZOTTO: No. The police department
5 had taken the originals. Those were subsequently
6 destroyed or disposed of by the police department.
7 And that documentation had previously been provided
8 to Mr. Erdman. So the only thing that existed were
9 these clones of the drives that the police
10 department --

11 THE COURT: The clones still exist?

12 MR. POLIZZOTTO: They were given over to
13 Setec and TransPerfect.

14 THE COURT: Where are they now?

15 MR. POLIZZOTTO: TransPerfect.

16 THE COURT: They have these. But you still
17 have a relationship with TransPerfect or not?

18 MR. POLIZZOTTO: We still have a
19 relationship with TransPerfect.

20 THE COURT: Okay. So there's physical
21 copies of the P drives sitting with TransPerfect?

22 MR. POLIZZOTTO: They were delivered to
23 TransPerfect.

24 THE COURT: And you think, Mr. Erdman, that
25 TransPerfect -- it is not reflected on this listing

1 by TransPerfect, right?

2 MR. ERDMAN: Correct. What I believe --

3 THE COURT: So you think they're just
4 sitting on them? I don't understand.

5 MR. ERDMAN: I believe they might still be
6 with one of the forensic companies, likely Setec.
7 Setec was sent to get the original drives from the
8 NYPD and provided copies from Mr. Victor.

9 What I believe happened is Mr. Victor
10 wanted to analyze the hard drives I had given him
11 to --

12 THE COURT: By the way, have you deposed
13 Victor about all this?

14 MR. ERDMAN: He doesn't recall pretty much
15 anything of substance when asked.

16 THE COURT: So the answer is, yes, but he
17 doesn't recall.

18 Okay. Go ahead.

19 You deposed him?

20 MR. ERDMAN: Yes, I did.

21 THE COURT: Or you talked to him?

22 MR. ERDMAN: Deposed.

23 THE COURT: Go ahead.

24 MR. ERDMAN: Mr. Victor wanted to continue
25 making claims to law enforcement, and he had hired a

1 new forensics company to do an analysis of the hard
2 drives I provided. And I believe that's why Setec
3 had only provided those four hard drives I had given
4 them without providing additional material.

5 THE COURT: Okay. Well, you know, maybe
6 we're in the land of spoliation. So if you think
7 there are drives out there that they say they no
8 longer have custody of, either personally or -- you
9 know, obviously, they have the ability to get back
10 hard drives from their contractors, like Setec and
11 TransPerfect.

12 If you think you can prove that, when this
13 is all over, you can make a motion for spoliation,
14 but I can't order someone to produce something if
15 they claim they don't have it. That's the problem.

16 MR. ERDMAN: They're also --

17 THE COURT: Even if you have -- if you have
18 evidence, you know, that they once had it or they
19 lost it or whatever, you can make a spoliation
20 motion. That's at another time.

21 So, with that in mind, let's talk about
22 what they actually have, that they admit they
23 have -- because, you know, again, if you say they
24 have it and they say they don't, that's spoliation
25 land. I can't order them to do something with a

1 hard drive or anything else that they say they don't
2 have. Now, if you end up proving that they had it
3 when they claim they didn't, then you get spoliation
4 sanctions, okay?

5 So let's, now, confine this entire
6 application to things that they say they have, and
7 this may end at the whole application. I don't
8 know. Confine it to things that they admit that
9 they have and that you say has not been searched or
10 has not been produced.

11 Do you understand what I'm telling you to
12 do now?

13 MR. ERDMAN: Yes, I do.

14 THE COURT: Okay. So now that we're doing
15 that, what, if anything, is left?

16 MR. ERDMAN: Okay. I had raised the issue
17 of the forensic images in my application, and they
18 didn't make any claim that they do not have those
19 images. Instead, they said, "Forensic images would
20 have resulted in duplicates, which, as stated, were
21 removed by part of the process."

22 THE COURT: And what are you quoting from?
23 I'm sorry.

24 MR. ERDMAN: 281, their response to my
25 letter. And that's on page 3.

1 THE COURT: Okay. I'm not sure I even
2 understand it, but let me just read it.

3 What paragraph are you reading from?

4 MR. ERDMAN: It's the first paragraph.
5 Three lines up from the end of the paragraph.

6 THE COURT: Forensic images -- okay.

7 I have no idea what that sentence means.
8 Maybe whoever wrote it wants to explain it:
9 "Forensic images would have resulted in duplicates,
10 which, as stated, were removed as part of the
11 process."

12 MR. RODRIGUEZ: After speaking to my
13 client, Mr. Victor indicated that those images would
14 have been of data that was already produced.

15 THE COURT: I don't know what images we're
16 even talking about.

17 MR. RODRIGUEZ: That's a good question
18 also, Your Honor.

19 THE COURT: Well, you wrote the sentence.
20 What are you referring to?

21 MR. RODRIGUEZ: When I wrote the sentence,
22 I was trying to go by what Mr. Erdman was referring
23 to, saying that they use forensic images on these
24 drives. And then I went to my client and that's the
25 best answer that he could give.

1 THE COURT: Okay. Does he still have the
2 forensic images or not? Or don't you know?

3 MR. POLIZZOTTO: Your Honor, my
4 understanding is that these images, whatever images
5 do exist, were all given to the two vendors. And
6 the two vendors had performed the searches and --

7 THE COURT: Okay. So the forensic images
8 were given to the vendors. You say the vendors
9 didn't produce them.

10 MR. POLIZZOTTO: And then --

11 THE COURT: Okay. Hold on. Hold on.

12 MR. POLIZZOTTO: I'm just trying to explain
13 the sentence, Your Honor.

14 THE COURT: Go ahead.

15 MR. POLIZZOTTO: And that when the experts
16 had done their reviews they eliminated duplicates.

17 THE COURT: I'm sorry. "When the experts"?
18 What are you referring to?

19 MR. POLIZZOTTO: When the experts had
20 reviewed the --

21 THE COURT: When you say "experts," do you
22 mean the vendors?

23 MR. POLIZZOTTO: I'm sorry. The vendors.

24 MR. RODRIGUEZ: The vendors.

25 MR. POLIZZOTTO: I apologize.

1 The vendors had done their review of all
2 the import of the data. They eliminated duplicates.

3 THE COURT: Okay.

4 MR. POLIZZOTTO: And that the forensic
5 images were part of the duplicates.

6 THE COURT: All right.

7 So, again, I think we're still in -- we're
8 back where I was, Mr. Erdman, which is, they're
9 claiming whatever they have they gave to the
10 vendors, that their vendors gave everything to you.
11 You deny that. So if you can show you didn't get
12 something, then you get spoliation sanctions. I
13 can't make them produce something that they say they
14 don't have.

15 MR. ERDMAN: Okay.

16 THE COURT: All right.

17 MR. ERDMAN: One note on these hard drives
18 they're talking about. That's from 2021. It
19 doesn't look like they ever searched for anything,
20 really, other than a couple e-mail accounts and
21 Dropbox accounts since you ordered them to do so.
22 There's --

23 THE COURT: Again, try to present this to
24 me in the terms that I talked to you about.

25 So what is it that they admit exists that

1 has not been either produced to you or searched for
2 you?

3 MR. ERDMAN: I think one of the problems
4 with that is they claim -- anytime I ask them about
5 something, they claim it went to a vendor and was
6 produced.

7 THE COURT: Okay. So if you can produce --
8 I think, then, we keep ending up back in the same
9 place, which is, if you -- I don't know what more to
10 order.

11 MR. ERDMAN: Okay.

12 THE COURT: If you can prove that they had
13 a piece of evidence or repository of information and
14 then, you know, destroyed it, lost it, failed to
15 search it, you know, claimed it didn't exist, that's
16 where spoliation comes in.

17 Do you know what spoliation is?

18 MR. ERDMAN: Yes, I do.

19 THE COURT: Okay. So, you know, if
20 something's lost or destroyed -- and this all comes
21 within that -- even if you think it still exists, if
22 they say it doesn't exist, then that's the same as
23 it were -- if you can prove it once existed, that
24 it's now lost. Do you see what I'm saying?

25 MR. ERDMAN: Yes, I do.

1 THE COURT: So then if you show that, then
2 you meet the first step of spoliation sanctions and
3 can see if you can get any sanctions for that. I'm
4 not guaranteeing you will, but there's nothing -- I
5 don't see what I can order.

6 MR. ERDMAN: I think what we might be able
7 to resolve is as far as e-mail accounts.

8 THE COURT: Okay. I mean, that's something
9 where, if we know something exists, we can talk
10 about whether an adequate search was done or not.
11 So I think you're, now, understanding what I'm
12 getting at.

13 So tell me what part of your letter I
14 should look at to see what we should talk about.

15 MR. ERDMAN: So on my letter, 279, at
16 page 7.

17 THE COURT: Okay. So you have a listing of
18 29 accounts that you believe was used by the
19 defendant; is that right?

20 MR. ERDMAN: Correct.

21 THE COURT: Okay. And you want a search --
22 or whatever that's been involving. I don't know --
23 of those accounts because you think it hasn't
24 previously been done?

25 MR. ERDMAN: Yes. They had said they only

1 searched a subset of accounts and that there's no
2 responsive documents in other accounts, but I have a
3 screenshot from Mr. Victor's computer showing those
4 other accounts and there's clearly e-mails within
5 them.

6 THE COURT: Okay. So we're talking about
7 these -- did you folks investigate each of these 29
8 e-mail accounts?

9 MR. RODRIGUEZ: Yes.

10 THE COURT: And if so, how?

11 MR. RODRIGUEZ: Yes. Victor only used six
12 of those accounts. He's created all of those
13 accounts, but he only used six of them.

14 THE COURT: Okay.

15 MR. RODRIGUEZ: Only six of them provided
16 had -- according to our vendor, they were only able
17 to pull e-mails from six of those accounts because
18 only six of them had any information.

19 THE COURT: Are you telling me the vendor
20 actually went to all of these accounts?

21 MR. RODRIGUEZ: The vendor, when he did the
22 pull from Adam's computer, when they did the
23 collection --

24 THE COURT: Okay.

25 MR. RODRIGUEZ: -- there was only e-mails

1 in six of the accounts.

2 THE COURT: Got it.

3 So I guess the question is, where does this
4 get pulled from? It's getting pulled from his
5 computer, not from some web repository; is that
6 right?

7 MR. RODRIGUEZ: That is correct.

8 THE COURT: Okay.

9 Go ahead.

10 MR. ERDMAN: In their collection log, they
11 had searched Eugenia and Nazeem's office e-mail
12 accounts, and they're very clearly delineated on the
13 log when they did so. There's no evidence that they
14 searched these --

15 THE COURT: Wait, wait. What log? I'm
16 sorry.

17 MR. ERDMAN: In one of their -- they
18 provided a log of what repositories they searched.

19 THE COURT: Okay.

20 MR. ERDMAN: And this was in November of
21 2022. They had searched two e-mail accounts, and it
22 very clearly says they did an e-mail collection.
23 There's nothing else indicating that for these
24 accounts. I believe they're trying to reuse a
25 search that was done in 2019 by the Braverman firm.

1 And I don't believe they even have access to that
2 anymore or know any details. And, like, their
3 privilege log pretty much omits the entire
4 limitations period. It's just blank because the
5 Braverman search was done in August of '19 and it
6 just stops. There's no Victor e-mails after that
7 point.

8 THE COURT: Okay. So is it your
9 contention, defendants, that this was searched after
10 2019, these 29 -- I'm sorry -- the six e-mail
11 accounts that you say were used?

12 MR. RODRIGUEZ: That's correct, Your Honor.
13 The two e-mail accounts that he's referring to are
14 two employee accounts. That's not part of this
15 list.

16 MR. ERDMAN: Not --

17 MR. RODRIGUEZ: Of this -- I'm speaking.

18 Of this list, all of these e-mails were
19 searched. And Mr. Victor already knew that he only
20 used six of them. He created all of them. But for
21 his business and for himself, he only used --

22 THE COURT: Can you tell me which six?

23 MR. RODRIGUEZ: It's the six that had
24 company names on them, actually. The TransEnergy
25 one, TransGas Development, TransNational. Matter of

1 fact, and I list those six in my response to his
2 letter. This should be in my letter of 8-21, the
3 exact six that produced e-mails. And I've also
4 referred to that --

5 THE COURT: Hold on. Hold on.

6 They're attached as an exhibit, the list of
7 e-mail accounts.

8 MR. POLIZZOTTO: Your Honor, it's a
9 combination of Docket 266 and 281. Five of them are
10 listed in paragraph 16 in Docket 266. And the other
11 e-mail is listed in Docket 281 on page 205.

12 THE COURT: Okay. So now what do I do?

13 Again, they claim they've searched this
14 thing, and you say you think they haven't.

15 What am I supposed to do?

16 MR. ERDMAN: Would I be able to show you a
17 document from his computer?

18 THE COURT: Sure. Should you have a copy
19 for the other side?

20 MR. ERDMAN: I believe I sent you guys that
21 one. It's from his -- a screenshot from his
22 computer.

23 THE COURT: Is it in something previously
24 supplied to me?

25 MR. ERDMAN: No. No.

1 THE COURT: Well, let them see. And after
2 they've looked at it, I'll look at it. Tell them
3 what it is.

4 MR. ERDMAN: It's a screenshot that was
5 from Mr. Victor's computer, and it shows the e-mail
6 accounts that were in use on it. And then it also
7 shows the amount of e-mails in each account.

8 MR. POLIZZOTTO: Your Honor, I --

9 THE COURT: Give it to my clerk.

10 MR. POLIZZOTTO: I don't know where that
11 was taken from. I don't know what it is. It could
12 have been made anywhere. I'm not saying it's not
13 accurate. I'm not saying it is accurate. It's the
14 first time I've seen this purported screenshot.

15 MR. ERDMAN: Here's another one. Here's
16 another one with similar information on it.

17 MR. POLIZZOTTO: It would be the same
18 argument I'd have to both.

19 THE COURT: Well, you're going to have to
20 look, at least, into this e-mail issue.

21 What year was this photograph taken?

22 MR. ERDMAN: I believe that one was 2015.

23 Your Honor, I have an idea of how --

24 MR. POLIZZOTTO: Your Honor, if I might, on
25 the issue of this additional discovery, as the Court

1 had found in the motion to dismiss, the statements
2 regarding the -- that are at issue here pertain to
3 crimes and defamation per se.

4 The documents that are being sought right
5 here -- he doesn't have to prove that the statements
6 were not true. To the contrary, I have to prove
7 that they were true if there's going to be a
8 defense. These e-mail accounts, if they do contain
9 anything, predate the statements -- he indicated
10 that's from 2015 -- and would only hurt my client if
11 they existed and weren't produced because then I
12 couldn't use them in theory to show that the
13 statements were true.

14 My client would only be hurting himself if
15 he failed to produce anything in these e-mail
16 accounts. Because they're defamatory per se, I have
17 to show they're untrue or they are true.

18 THE COURT: So, Mr. Erdman, he says you
19 don't really need this stuff from these e-mail
20 accounts.

21 MR. ERDMAN: And that's false because I
22 don't have any of Victor's e-mails past August of
23 2019. And they exist because they had retrieved a
24 few e-mails from Patrick Timlin, who was --

25 THE COURT: Okay. But now you -- okay, so

1 you're talking about post-2019 e-mails.

2 MR. ERDMAN: Yes. I'm saying I --

3 THE COURT: Okay. So the issue is what he
4 was using post-2019. This, you said, is years
5 before, right?

6 MR. ERDMAN: Okay. Yeah.

7 THE COURT: Well, it doesn't mean he was
8 using it in 2019.

9 How about if we get a sworn statement from
10 him saying what e-mails he used in 2019?

11 MR. ERDMAN: I have extensive knowledge of
12 his affidavits and --

13 THE COURT: No, no, but in 2019? What
14 e-mail accounts he was using in 2019?

15 MR. ERDMAN: I don't think that response to
16 be credible.

17 THE COURT: No, but -- I know, but why does
18 the fact that he was using something five years
19 earlier show what he was doing in 2019?

20 MR. ERDMAN: Oh, I understand your point on
21 that. I'm just saying, from their collection log
22 and their information provided, there's no evidence
23 they ever did a search as they were ordered to for
24 this action, regardless of which e-mail accounts.
25 Even if we're just limiting it to those six, they

1 never searched them for this action.

2 THE COURT: Okay. Now, we're talking about
3 the six.

4 MR. ERDMAN: Correct.

5 THE COURT: Did you search them post-2019
6 for this action?

7 MR. RODRIGUEZ: Yes, Your Honor, as our --

8 THE COURT: Who did it and how?

9 MR. RODRIGUEZ: Mr. Victor did the
10 searches. Matter of fact, our submissions have
11 shown that we even submitted documents holding a
12 date range from 1996 to 2022.

13 THE COURT: So did you submit e-mails from
14 those six accounts?

15 MR. RODRIGUEZ: Yes, we did, Your Honor.

16 MR. ERDMAN: It's very easy to prove that
17 wrong. You can just go on the privilege log, search
18 for --

19 THE COURT: Again, let's not go over this.
20 They claim they weren't claiming privilege.

21 MR. ERDMAN: So for Mr. Victor's e-mail --

22 THE COURT: Did you get any e-mails from
23 those accounts after 2019 -- after June 1, 2019?

24 MR. ERDMAN: No. And I can tell because
25 I --

1 THE COURT: Do you think there are such
2 e-mails that you gave to him post-June 1, 2019?

3 MR. RODRIGUEZ: We have submitted e-mails,
4 like I said, all the way to 2022. I don't know from
5 which accounts exactly --

6 THE COURT: You don't know if it's from
7 those six accounts?

8 MR. RODRIGUEZ: I don't know if it's in
9 those six accounts exactly, but --

10 THE COURT: Did you do a search?

11 Do we know what the search was done on the
12 e-mail accounts, or you just gave everything?

13 MR. RODRIGUEZ: We know that Mr. Victor
14 indicated there was a search done. And, like I
15 said, TransPerfect did make a network collection.

16 THE COURT: No, no, no. But that
17 wouldn't -- is that getting these six e-mail
18 accounts post --

19 MR. RODRIGUEZ: Yes.

20 THE COURT: -- post-2019?

21 MR. RODRIGUEZ: Yes, Your Honor.

22 THE COURT: Okay. Well, maybe now we're
23 back where we were, which is you say -- well, no.

24 Okay. This is a little different because
25 they're saying, yes, we have access to e-mails with

1 those e-mail accounts, but whatever you got, or if
2 there was nothing, there was nothing responsive. I
3 think that's what's going on right now.

4 MR. ERDMAN: I think one thing I'd like to
5 figure out is when they went to search the two
6 office e-mail accounts, TransPerfect was given
7 access, and they collected --

8 THE COURT: The two office e-mail accounts?
9 Just so I know what I'm talking about.

10 MR. ERDMAN: Which is Eugenia@TGDS and
11 Nazeem@TGDS.

12 THE COURT: What numbers in 1 through 29?

13 MR. RODRIGUEZ: That's not part of that
14 list, Your Honor. Those are two employee accounts.

15 MR. ERDMAN: They had multiple lists.

16 THE COURT: I thought we were talking --
17 this whole time, I thought we were talking about 1
18 to 29.

19 MR. RODRIGUEZ: No. That's why I said he's
20 referring to two employee e-mail accounts.

21 THE COURT: How did we get off 1 to 29?
22 That's what I thought I was talking to you the whole
23 time about this.

24 MR. ERDMAN: They had provided multiple
25 versions of the collection log, which sometimes omit

1 and sometimes add to.

2 THE COURT: Okay. Well, now, we have to go
3 back 15 minutes.

4 What I said to you was, let's focus on the
5 things that you can prove they still have and
6 haven't done something with. And I explained to you
7 why you hadn't done -- we're, now, not doing that
8 anymore with the P drives or anything else.

9 And then you said to me, oh, the e-mail
10 accounts. And I said, what e-mail accounts? And
11 you said, 1 through 29.

12 MR. ERDMAN: Oh, these were not on that
13 list. Those are just Victor's own accounts.

14 THE COURT: Hold on. I haven't finished
15 where I was going.

16 So let me go back and say, are there --
17 first of all, is this not an exhaustive list? Is
18 that the problem?

19 MR. ERDMAN: That list is based on an Excel
20 sheet they had given to Braverman to do a collection
21 in 2019.

22 THE COURT: Okay. Are we done talking
23 about this or not? I don't even know where we are
24 anymore because you --

25 MR. ERDMAN: Well, the point I wanted to

1 make is they had a professional collection done
2 where they gave TransPerfect access to those e-mail
3 accounts.

4 THE COURT: What e-mail accounts?

5 MR. ERDMAN: The office e-mail accounts,
6 Eugenia and Nazeem@TGDS.com.

7 THE COURT: And that's not on 1 through 29.

8 MR. ERDMAN: No, it is not.

9 THE COURT: Okay. So I'm not done
10 talking -- are we, now, done talking about the --

11 MR. ERDMAN: No. I'm trying to get back to
12 it.

13 THE COURT: Okay. Go ahead.

14 MR. ERDMAN: Just instead of having a
15 professional do this collection and search, they had
16 Mr. Victor do it. And there's no evidence he ever
17 gave anything to Setec or even found anything.

18 THE COURT: Okay. Well, now, this, at
19 least, I'm understanding. So we can talk about the
20 accounts that -- I mean, I think it's not fulfilling
21 their lawyerly duties to say to their clients,
22 search the e-mail accounts and let me know what you
23 find, without any oversight, and there's plenty of
24 case law on that.

25 So maybe that needs to be redone if that's

1 really what happened here. And it sounds like that
2 is what happened here. So if you tell me which
3 e-mail accounts we're talking about that are active
4 in 2019, then I'll discuss with them whether they
5 need to, now, supervise a search in that.

6 MR. ERDMAN: So the list of accounts that I
7 quoted, that are on here, these 29, are from Victor
8 in 2019 because he had provided these for a
9 collection to Braverman that they did in August of
10 2019.

11 THE COURT: Okay. So --

12 MR. ERDMAN: So presumably they would
13 exist, as he thought them relevant enough to provide
14 the Braverman.

15 THE COURT: And yet defendants are telling
16 me that he provided them to --

17 Do you deny they were provided to
18 Braverman?

19 MR. ERDMAN: So --

20 THE COURT: No, no. I'm asking defendants.

21 MR. RODRIGUEZ: They were provided to
22 Braverman because he was asked to provide a complete
23 list of e-mail accounts that he has.

24 THE COURT: Okay. But you're saying he
25 didn't use --

1 MR. RODRIGUEZ: He created a lot of them --

2 THE COURT: And then used six of them. Got
3 it.

4 Okay. Back to where we were.

5 So if you can identify some e-mail accounts
6 that he used, that you have reason to believe were
7 not properly searched, either because they gave no
8 oversight to it -- which it sounds like -- or some
9 other reason, then I'm willing to talk about that,
10 though I think I'm probably going to limit it to the
11 ones that, at this point, he's claiming he actually
12 used. So --

13 MR. ERDMAN: Well, I think --

14 THE COURT: Go ahead.

15 MR. ERDMAN: I just think they're not
16 saying that they don't have these e-mail accounts.
17 They're just saying that they didn't feel like
18 searching them based on their client saying he
19 didn't use them. I don't see why he should be taken
20 at face value similarly to him saying he searched.

21 THE COURT: I mean, I don't think it's
22 unreasonable. It's not that many.

23 I mean, how do people search, you know,
24 e-mail accounts? I mean, Gmail, we all know how to
25 do that.

1 MR. ERDMAN: So they could provide the --

2 THE COURT: 17, 18, 19, I don't even know
3 what that is. Those aren't e-mail addresses.

4 Anyone know?

5 MR. ERDMAN: I believe you just left off
6 the @gmail part for that.

7 MR. RODRIGUEZ: That's possible.

8 MR. ERDMAN: I mean, to do a search, as
9 TransPerfect probably did, they would provide, like,
10 a list of passwords such as this. The vendor would
11 then just be able to put that login information into
12 their software, collect whatever they're collecting,
13 and then do a search and production from it. It's
14 not a difficult process.

15 MR. RODRIGUEZ: Your Honor, he keeps saying
16 that it was something just, like, haphazardly
17 Mr. Victor did, but he did it in conjunction with
18 the vendor. The vendor did a network collection of
19 data.

20 MR. ERDMAN: Can you --

21 MR. RODRIGUEZ: So there was over --

22 THE COURT: In 2019?

23 MR. RODRIGUEZ: After 2019.

24 THE COURT: After 2019. For this case?

25 MR. RODRIGUEZ: Yes. That was a search

1 that was ordered by you back in 2022.

2 THE COURT: And of which e-mail accounts?

3 MR. RODRIGUEZ: Of these same e-mail
4 accounts.

5 MR. ERDMAN: So I only --

6 THE COURT: Is that right, Mr. Erdman?

7 MR. ERDMAN: I'm looking at their
8 collection log; there's only one entry for 2022. It
9 says it was for e-mails and it was for --

10 THE COURT: You're talking about a
11 collection log, not a privilege log.

12 MR. ERDMAN: Correct.

13 THE COURT: And where are you getting this?

14 MR. ERDMAN: This was the one attached to
15 his affidavit, this table.

16 THE COURT: Okay. Is that a collection
17 log? Why does that not reflect all these e-mail
18 accounts?

19 I'm asking defendants.

20 MR. RODRIGUEZ: It does reflect those
21 e-mail accounts, Your Honor. As I said, you ordered
22 that search.

23 THE COURT: Okay.

24 MR. RODRIGUEZ: Mr. Victor did that search
25 in conjunction with the vendor.

1 THE COURT: Again, it's --

2 MR. RODRIGUEZ: He simply says that they
3 don't cover those accounts, but they did.

4 MR. ERDMAN: So the --

5 THE COURT: They don't list the actual
6 accounts in --

7 MR. RODRIGUEZ: No, they do not.

8 THE COURT: I see.

9 MR. ERDMAN: The December '22 entry list is
10 an e-mail collection. It was for five items.
11 That's it. It's --

12 THE COURT: What do you mean, "for five
13 items"?

14 MR. ERDMAN: No. They only imported five
15 items. When I talked to Mr. Rodriguez previously,
16 he indicated that was getting documents from a
17 custodian from --

18 THE COURT: You know what the five items
19 are?

20 MR. RODRIGUEZ: Yes. From Sonja Bozek, one
21 custodian. That's not a network collection from the
22 vendor.

23 MR. ERDMAN: But it says "e-mail."

24 MR. RODRIGUEZ: Yeah, but those are e-mails
25 that I had gotten from Sonja Bozek. That's not what

1 those -- I'm telling you what they were.

2 MR. ERDMAN: Well, then there's nothing in
3 2022 indicating that they searched and gave anything
4 to TransPerfect.

5 MR. RODRIGUEZ: It's indicated up there on
6 the --

7 THE COURT: Hold on.

8 Go ahead.

9 MR. RODRIGUEZ: Your Honor, if we go to
10 Exhibit -- it should be 266-4.

11 MR. POLIZZOTTO: No.

12 MR. RODRIGUEZ: Oh, I'm sorry -3. I
13 apologize, Your Honor.

14 It shows -- it's a batch collection, and it
15 shows three days.

16 THE COURT: Hold on.

17 MR. RODRIGUEZ: Sure.

18 THE COURT: Mine only goes up to 266-3.

19 MR. RODRIGUEZ: It is -3, Your Honor.

20 It is -3, Your Honor. So I apologize that
21 I said "4."

22 If you go to last date, there's three
23 collections that were done in November 2022.

24 MR. ERDMAN: And that's not --

25 MR. RODRIGUEZ: I'm not done speaking.

1 And he keeps saying that, oh, these were
2 never done, but our vendor keeps showing that they
3 were collected. There were three batch collections
4 in response to the order that you gave.

5 THE COURT: And you're saying that covers
6 these e-mail addresses?

7 MR. RODRIGUEZ: That is correct. And if
8 you look at the record count, the record counts are
9 pretty sizable. A couple of thousand --

10 THE COURT: What's your view, Mr. Erdman?

11 MR. ERDMAN: He had provided a different
12 collection log that --

13 THE COURT: "He"?

14 MR. ERDMAN: Mr. Rodriguez -- that listed
15 those collections as being from those two office
16 e-mail accounts and two Dropbox accounts. Those
17 weren't collections from Mr. Victor.

18 THE COURT: What are you referring to?

19 MR. ERDMAN: It was another log he had
20 provided to me earlier.

21 THE COURT: You're going to have to show it
22 to me.

23 Do you know what he's talking about,
24 Mr. Rodriguez?

25 MR. RODRIGUEZ: No.

1 MR. ERDMAN: I have the data copy and
2 pasted to make it more readable. It's the same
3 data, if that --

4 THE COURT: Well, show it to him.

5 MR. RODRIGUEZ: I mean, our collections are
6 perfectly --

7 MR. ERDMAN: And I provided that to you.

8 THE COURT: But this is a document that you
9 say shows that this particular entry does not relate
10 to Victor's e-mails?

11 MR. ERDMAN: Correct.

12 And I also reviewed those documents to see
13 where they came from. And they had file path
14 information that indicated they were from Dropbox or
15 those two e-mail accounts. And there was a pretty
16 clear indication of where they were all from.

17 MR. POLIZZOTTO: No. Your Honor, this
18 is -- what he's handed me is his analysis of 266-1
19 and -3 --

20 THE COURT: You know, I think we're back
21 where we were, which is, if you're claiming that you
22 have evidence that they didn't produce this, I'm
23 willing to count that as lost for purposes of
24 spoliation.

25 I don't see -- you know, there's nothing

1 they could say.

2 I gather you're not going to say in
3 response to the motion, oh, yeah, we have this, he
4 never asked for it. Am I right?

5 MR. POLIZZOTTO: Correct. Depending what
6 he asked for, but correct. I would assume that that
7 would be the answer.

8 THE COURT: Okay. Because, you know, at
9 this point, I'm just getting two different views
10 about what you searched. So, at this point, you
11 know, if you didn't search -- if he can prove that
12 you didn't search something that you claim you have
13 searched, then, I mean, either it's spoliation or
14 it's just a regular -- I would do the exact same
15 sanction under Rule 37, having now delayed it for,
16 you know, years because it never got done.

17 So it's all a question of what you're going
18 to be able to prove.

19 MR. ERDMAN: Would it make sense if I am
20 allowed to depose those vendors under oath and just
21 figure out exactly what they had, when they had it,
22 what happened to it, what was searched?

23 THE COURT: I mean, I'd rather you just
24 talk to them. Has that not been made available to
25 you?

1 MR. ERDMAN: They don't provide any
2 details.

3 MR. POLIZZOTTO: I'm sorry. We had a
4 conference, Your Honor, with myself, Mr. Rodriguez,
5 Mr. Erdman and both vendors.

6 THE COURT: Right.

7 MR. POLIZZOTTO: And we were on for well
8 over an hour to two hours. For Setec, Mr. Erdman
9 asked approximately five questions and finished with
10 them. He spent most of his time on TransPerfect.
11 He indicated he was going to come up with some kind
12 of list of questions they had afterwards, but he was
13 not curtailed in how long he could ask them
14 questions, what questions he could ask. The
15 individuals who were involved answered his
16 questions. He's, kind of, already done that.

17 THE COURT: Yeah. Why do we need to do it
18 again?

19 MR. ERDMAN: One of the witnesses had a
20 hard cutoff and had to go, and I was being rushed
21 off. And the people provided didn't know details.
22 I would ask -- there was e-mails of Setec going to
23 retrieve the P drives.

24 THE COURT: There was what?

25 MR. ERDMAN: Setec was hired to go to the

1 NYPD and retrieve the P drive. There's e-mails
2 showing that, but when I asked the person there,
3 they had absolutely no idea of that whole situation.
4 Same with TransPerfect. When I asked him to tell me
5 more about what's on these logs, he's just unable to
6 do so.

7 THE COURT: You think there's someone else
8 there who knows?

9 MR. ERDMAN: I think if there's someone who
10 can actually review stuff -- like, there should be
11 someone who could go in the closet and see what hard
12 drives they have there. It doesn't seem like
13 there's been any effort to identify what these hard
14 drives were.

15 MR. RODRIGUEZ: Your Honor, can I answer
16 that?

17 THE COURT: Sure.

18 MR. RODRIGUEZ: It's absolutely not true.
19 He dealt with Mr. Todd Stefan from Setec, who was
20 the one who worked with Mr. Victor on collecting the
21 Victor hard drives, and the person at TransPerfect
22 who has worked with Mr. Victor's database from the
23 time that we came into the case. So it's absolutely
24 not true. He was the perfect person, and he had all
25 the information, and he did answer his questions.

1 THE COURT: I mean, I'm certainly willing
2 to give you another session if someone said they had
3 to leave.

4 MR. RODRIGUEZ: Your Honor, may I say he
5 literally had five minutes of questions for
6 Mr. Stefan from Setec.

7 THE COURT: That's the one who had to
8 leave?

9 MR. POLIZZOTTO: No. And he
10 acknowledged -- we asked him, do you have any other
11 questions for him? And he said no.

12 MR. ERDMAN: Well, Setec, for example,
13 wasn't able to define what hard drives they had sent
14 to Mr. Rodriguez.

15 THE COURT: Why don't you get a list of
16 questions so that they're not blindsided by this.
17 Get a list of very specific and not-hard-to-answer
18 questions that you feel you need the answer to, and
19 then let's have another session where they answer
20 those questions, if they can.

21 I would rather not -- you know, I don't
22 want to start torturing discovery vendors with
23 depositions under oath. It seems to me perfectly
24 adequate for you to talk to them about what happened
25 here.

1 MR. ERDMAN: Yeah, I can definitely do
2 that.

3 THE COURT: I mean, unless -- I mean, if
4 the defendant's going to object that, you know,
5 he's -- if he brings up things they say -- usually,
6 in discovery, it's not an issue. He brings up
7 things they say. You're going to say, oh, that's
8 not under oath. You should reject it. Then maybe I
9 need to have a deposition.

10 I mean, are you willing to accept that the
11 answers given by these individuals reflect the facts
12 as Setec and TransPerfect understand them, or do I
13 need to order a deposition?

14 MR. RODRIGUEZ: Are you speaking to us,
15 Your Honor, or Mr. Erdman?

16 THE COURT: Yes. No, to you.

17 MR. POLIZZOTTO: I'm willing to accept
18 their answer.

19 MR. RODRIGUEZ: We'll accept it.

20 MR. ERDMAN: I'm reviewing the transcript
21 from that conference. Just as an example, I asked
22 Mr. Rodriguez to explain why that privilege log
23 cutoff existed in 2019, which he was also ordered to
24 do and did not. He said, "It's no good because
25 that's before the relevant time period for you.

1 June is anything after June."

2 So he was taking the position that anything
3 after the cutoff would be undiscoverable.

4 MR. RODRIGUEZ: Your Honor, I have answered
5 that question many times. We believe that's -- the
6 last document on that log is the last document we're
7 claiming privilege on. We're not going to go and
8 claim privilege on extra documents just to be able
9 to satisfy his curiosity. The last document on the
10 log is the last document we're claiming privilege
11 on, period.

12 THE COURT: I feel like we've done this 50
13 times, Mr. Erdman.

14 MR. ERDMAN: I mean, my problem isn't that
15 it's not on the log. There's also no e-mails
16 produced after that time. There's just -- when
17 Braverman did their collection in August of 2019 --

18 THE COURT: Okay. But the reason -- can
19 you just accept the reason has nothing to do with
20 privilege at this point?

21 MR. ERDMAN: Oh, yeah. I'm not arguing
22 that it is. I'm just saying it demonstrates that
23 they just didn't search e-mails after that point.
24 The easiest way to show that is off of their
25 privilege log.

1 THE COURT: Well, no, it's not the easiest
2 way if they say they're not claiming privilege after
3 2019.

4 MR. ERDMAN: Well, I'm saying if there's
5 also -- if I review the production, I see that same
6 gap. There's just no documents in -- after August
7 2019.

8 THE COURT: Well, okay. That's a different
9 question. Let's not mix it up with privilege, okay?

10 So you think there should be documents out
11 there. They say that they did their search and it's
12 not there. So, you know, I don't know what else to
13 tell you. You can't order someone to produce
14 something they say isn't there. If they didn't do a
15 proper search and you can prove that, then we're --
16 I'm willing to give you -- there will be sanctions
17 for that because, at this point, you know, having
18 been through this a million times, I'm not going to
19 send them back to redo a search. If they didn't do
20 a proper search, there will be a consequence for
21 that.

22 So, again, we're back to where we were
23 before, which is: Is there something that they
24 admit they have that you know you can prove is not
25 properly searched and that there's something they

1 can do now?

2 If there isn't anything, then I think we
3 may be done.

4 MR. ERDMAN: I believe it's just -- the
5 easiest ones for that would be e-mail accounts.
6 There's also office e-mail accounts.

7 THE COURT: Okay. One at a time. I tried
8 to do this before. E-mail accounts.

9 So let's talk about what e-mail accounts
10 we're talking about specifically.

11 MR. ERDMAN: Mr. Victor used a corporate
12 version of Gmail.

13 THE COURT: Is this within 1 through 29 or
14 somewhere else?

15 MR. ERDMAN: It's going to be some of those
16 accounts, but I can't tell definitively which ones.

17 THE COURT: Okay. Well --

18 MR. ERDMAN: He changes the user names
19 frequently.

20 THE COURT: Okay. You're interested in
21 e-mail accounts that he used that are somehow not
22 reflected on -- I mean, they have a contention as
23 to -- that there's only six e-mail accounts he used,
24 notwithstanding the creation of addresses, at least
25 in the relevant time period, which is now, for this

1 purpose, 2019 -- June 1, 2019 to June 1, 2020.

2 Your answer to that, if I recall, was that
3 the vendor did the search or that Victor did the
4 search?

5 MR. RODRIGUEZ: Mr. Victor did the search,
6 and the vendor did the collection of the e-mails.

7 THE COURT: Okay. So Victor picked out the
8 e-mails.

9 Mr. Erdman, the only thing so far that
10 raises questions with me -- and I'll now address it
11 with the lawyers -- is you can't just go to your
12 client and say, search these terms and let me know
13 what you find. You have to do something to monitor
14 that when this individual is not a professional or
15 anything else. So that means sitting down with him,
16 seeing what he did, and making sure he did it
17 properly. If that didn't occur, that needs to be
18 redone.

19 Did that occur, or did you completely rely
20 on what he told you?

21 MR. RODRIGUEZ: We relied on what he told
22 us.

23 THE COURT: So that needs to be redone for
24 2019 to 2020, for the six e-mail accounts that he
25 claims he used, all right.

1 And then when you get whatever it is, you
2 need to either give it directly to Mr. Erdman or
3 send it in through the vendor. So I'll give you two
4 weeks to do that, all right? September 20th.

5 Is there anything else of that ilk,
6 Mr. Erdman?

7 MR. ERDMAN: I think most of it -- I will
8 have to send the questions for the vendors. If they
9 say they produced everything and it's not on their
10 collection log, I think I need to have someone with
11 knowledge address that.

12 THE COURT: Well, I'm letting you do some
13 questions for the vendors.

14 MR. ERDMAN: Yeah.

15 The other problem is Mr. Rodriguez has been
16 claiming to be reviewing privilege log entries that
17 I had given him a few weeks before our last
18 conference. He said he no longer has access to
19 Relativity through TransPerfect because their bills
20 have gone unpaid.

21 THE COURT: Is that true?

22 MR. RODRIGUEZ: That is true. The
23 reinsurer -- well, it was being paid by Travelers.
24 They're the ones that had the original policy. So
25 that limit has been -- has been already used up. So

1 Chubb, who's the reinsurer, is supposed to be
2 picking up the coverage of the costs. And we're
3 going back and forth with Chubb now because Chubb
4 keeps asking for more information, more information
5 before they go and officially decide to cover the
6 costs.

7 THE COURT: How much cost are we talking
8 about?

9 MR. RODRIGUEZ: It's pretty significant.
10 It's --

11 THE COURT: You have the bill?

12 MR. RODRIGUEZ: I think it's close to six
13 figures, if I'm not -- or over it. Just over it.
14 I'm not sure, Your Honor, but it's significant.
15 It's a lot.

16 THE COURT: So did you once have access to
17 Relativity, or only you have access?

18 MR. RODRIGUEZ: Well, he had access to --

19 MR. ERDMAN: I have --

20 MR. RODRIGUEZ: -- production, right?
21 Yeah, that's correct.

22 MR. ERDMAN: I have my own software. They
23 would give me production. I put it into my own, so
24 it's unrelated to their predicament.

25 THE COURT: Okay. So you have your own

1 predicament because you need to get to what?

2 MR. ERDMAN: They can't --

3 THE COURT: No, no, no.

4 MR. RODRIGUEZ: What he's referring to, he
5 questions a batch of documents -- actually, three
6 groups of documents. So for me to be able to go
7 over them and be able to review --

8 THE COURT: You can't see the original
9 documents anymore?

10 MR. RODRIGUEZ: I cannot see the documents
11 anymore, that's correct, because I don't have access
12 anymore.

13 THE COURT: How many documents are there?

14 MR. RODRIGUEZ: A couple hundred. I would
15 say it's about 400, just about.

16 MR. ERDMAN: Could be.

17 MR. RODRIGUEZ: It's about 400.

18 MR. ERDMAN: But I think the bigger issue
19 is, if they're unable to access the e-discovery
20 platform, I don't see how they're producing anything
21 if they can't even review a single one of their own
22 documents. Nor is TransPerfect likely to be very
23 helpful in anything if their bills are going unpaid.

24 MR. RODRIGUEZ: Well, that's a situation
25 we're trying to remedy. We should be able to remedy

1 within the next --

2 THE COURT: Next what?

3 MR. POLIZZOTTO: We don't know. We don't
4 know the answer to that. We're working with them --

5 THE COURT: He claims you've been trying to
6 do this for years.

7 MR. POLIZZOTTO: -- trying to get.

8 THE COURT: How long has it been you've
9 been without --

10 MR. POLIZZOTTO: Chubb?

11 THE COURT: Let me finish.

12 How long has it been you've been without
13 access?

14 MR. RODRIGUEZ: Since the end of -- when
15 was the last conference, Your Honor? Was it April?
16 The end of April?

17 THE COURT: Probably.

18 MR. RODRIGUEZ: That's about when we lost
19 access.

20 MR. POLIZZOTTO: After that conference.

21 MR. ERDMAN: And Mr. Rodriguez has been
22 claiming he's working on the privilege review
23 multiple times, asked for extensions, and then only
24 recently admitted he could never see any of it the
25 entire time.

1 THE COURT: Well, not to me, because I
2 haven't seen him since April.

3 Well, that's a separate issue right now, is
4 the rereview of the privilege. So if it impacts
5 something else, then we can talk about, you know,
6 whether Victor needs to be responsible for paying
7 the bill or doing what you need to do to at least --
8 even if they're not going to host the platform, to
9 get access to the raw documents. Might be something
10 that wouldn't be unreasonable for me to just order
11 and then you'd have to deal with them without the
12 platform.

13 Okay. So we got distracted by the
14 privilege log questioning.

15 So I think we have something of a track.
16 I'm basically denying your application in terms of
17 requiring them to, you know, undertake acts, other
18 than what I said just now about redoing the e-mail
19 search for the accounts that Victor uses.

20 I mean, he better be accurate on these,
21 which accounts he used, at least in 2019, because if
22 it turns out that he lied about that, and, in fact,
23 there are other accounts, that's going to be a basis
24 for other sanctions. So you better make sure those
25 are really his only e-mail accounts where any

1 discoverable information could be located.

2 MR. RODRIGUEZ: He was pretty clear on
3 that, Your Honor.

4 THE COURT: Well, you better warn him about
5 the potential consequences if some e-mail comes up
6 from someone else that he used, from some other
7 account. He's going to have a great Rule 37 motion.

8 MR. ERDMAN: Your Honor, would we be able
9 to address just some statements they made in their
10 affidavit that seem to be relying on Victor's say
11 rather than facts?

12 THE COURT: I'm not sure what that meant,
13 but go ahead.

14 MR. ERDMAN: Like, they say he only had a
15 single computer, and that's just false. He had
16 several this entire --

17 THE COURT: I'm not going to go over
18 statements that you think might be incorrect. What
19 matters to me is, are there documents that you can
20 prove -- actually, let me back that up.

21 What matters to me is whether there's
22 something I can order at this point that would
23 advance discovery in this matter. As I keep telling
24 you, if they say X is true about what they have
25 access to, and you think they have access to

1 something else, that doesn't do anything right now
2 because, even if I believed you, what good would it
3 do for me to order them to produce something they
4 say they don't have?

5 The only way you can get relief for that is
6 if you actually do prove it, then they get a
7 sanction, either spoliation or just regular old 37.
8 It's the same analysis. It's basically the same
9 analysis, spoliation and a complete failure to
10 produce at any time. Under Rule 37, it's the same
11 factors, the same considerations.

12 So the answer is, no, I don't want to go
13 over statements you think are incorrect.

14 All right. So we're going to have some
15 reproduction by September 20th. You know, if this
16 privilege thing is still not solved within the next
17 few weeks, Mr. Erdman, you know, you can write to me
18 and -- first, talk to them. Write to me, and then I
19 will -- I don't know what I can order. It's
20 possible I could order TransPerfect to supply them
21 with the raw documents.

22 You might want to talk to TransPerfect
23 about that, saying that, you know, I'm considering
24 doing that.

25 Obviously, I'm not -- I'm sorry. Not

1 TransPerfect. Relativity, right?

2 MR. RODRIGUEZ: Yes.

3 THE COURT: Those are the people who have
4 the bill.

5 It's possible, you know, their real expense
6 may be, kind of, the hosting and the bells and
7 whistles. And they may have some understanding that
8 some raw document you gave to them they have to give
9 back to you. You understand what I'm saying?

10 So it may not need an order from me in
11 order for you to just get back the raw document.

12 Are you both following this?

13 MR. POLIZZOTTO: Yes.

14 THE COURT: So when he contacts you, you
15 need to talk that out with Relativity.

16 All right, Mr. Ehrman, I think we've
17 covered what we're going to do today.

18 MR. ERDMAN: There's one other really minor
19 issue. I had ordered a transcript.

20 THE COURT: Oh, yes, I remember that.

21 Did you agree to pay the transcript costs
22 or not?

23 MR. POLIZZOTTO: The transcript of?

24 THE COURT: The court conference.

25 MR. ERDMAN: The prior conference.

1 MR. POLIZZOTTO: Yes.

2 You didn't receive it?

3 MR. ERDMAN: You never said that -- never
4 said --

5 MR. POLIZZOTTO: I'd be happy to.

6 THE COURT: It's in his letter. You didn't
7 see it?

8 MR. POLIZZOTTO: I had told my staff to
9 send out the check. If it didn't go out, I will
10 personally take care of it.

11 THE COURT: Okay.

12 Anything else, Mr. Erdman?

13 MR. ERDMAN: No.

14 THE COURT: All right. I think we're done.
15 Thank you.

16 MR. POLIZZOTTO: Thank you.

17 MR. RODRIGUEZ: Thank you, Your Honor.

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C E R T I F I C A T E

I, Adrienne M. Mignano, certify that the foregoing transcript of proceedings in the case of Tyler Erdman v. Adam Victor, Docket #20CV4162 was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Adrienne M. Mignano
ADRIENNE M. MIGNANO, RPR

Date: September 17, 2024